

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

WILLIAM LEONARD, JR.

Plaintiff,

v.

**RELIASTAR LIFE INSURANCE
COMPANY f/k/a NORTHWESTERN
NATIONAL LIFE INSURANCE
COMPANY,**

Defendant.

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CASE No. 3:05-CV-1015-MEF-CSC

PLAINTIFF'S RULE 56(F) MOTION TO CONTINUE

Plaintiff hereby moves this Court to continue the setting of any scheduled response or hearing on Defendant's requested Motion for Summary Judgment, pursuant to *Rule 56(f)*, *F.R.C.P.*

Actually, on February 21, 2006, Defendants' filed a Motion to Dismiss the Plaintiff's First Amended Complaint or, in the alternative, for Summary Judgment and Incorporated Memorandum of Law.¹ Although filed as one motion, the alternative Motion for Summary Judgment was given a separate docket entry.² The Court has yet to issue an order for scheduled responses or set a hearing on either motion. In fact, the Defendant requested this Court to convert "their motion" into one for summary judgment and dismiss Plaintiff's First Amended Complaint with prejudice.³ Therefore, Plaintiff refers herein to both motions collectively as "Defendant's Motion" but for purposes of this request for *56(f)* relief, treat Defendant's Motion as one for summary judgment.

¹ See D.E. 16, entered 2/21/06

² See Motion for Summary Judgment by ReliaStar Life Insurance Company, docket entry date 2/22/06, contained within D.E. 16.

³ See D.E. 16 at 1.

Due to the nature of the information attached in support of Defendant's Motion, Plaintiff would be severely prejudiced by not having the opportunity to conduct discovery in order to refute Defendant's arguments, attached affidavits, and exhibits. In fact, at this early stage in the litigation, Plaintiff has not even been afforded the benefit of receiving Defendant's Initial Disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure. Plaintiff must be allowed the opportunity to obtain information and testimony, which is in the sole possession of Defendant, in order to fully respond to Defendant's Motion.

Specifically, Plaintiff seeks written discovery and testimony regarding the allocation and calculation of Plaintiff's premium, the development of Plaintiff's policy type, the marketing of Plaintiff's policy type, the design of the policy type, and the Defendant's training process or program in selling and explaining the policy type at issue in this case, as well as other actuarial and internal documents related to the policy at issue in this case. These are all areas which are specifically pled in Plaintiff's Complaint (*see*, First Amended Complaint). Plaintiff requires this essential discovery in order to refute the arguments set forth in Defendant's Motion. To not allow the Plaintiff the opportunity to conduct any discovery in this case for the purpose of refuting the issues raised in Defendant's Motion would severely prejudice the Plaintiff in this action. The Defendant has chosen to put issues into evidence which require the Plaintiff to conduct discovery on said issues and take sworn testimony. The affidavit of Plaintiff's attorney John E. Tomlinson is attached as Exhibit "A" in support of Plaintiff's Motion.

WHEREFORE, Plaintiff hereby moves the Court, pursuant to *Rule 56(f), F.R.C.P.*, to continue the setting of any scheduled responses or hearing on Defendant's requested Motion for Summary Judgment and allow Plaintiff the opportunity to conduct the necessary discovery.

Respectfully submitted this the 27th day of FEBRUARY, 2006.



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CERTIFICATE OF SERVICE

I hereby certify that on the 27th of FEBRUARY, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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